S.B. CIVIL WRIT PETITION NO.4202/2004
(Ramprakash Soni Vs. Shri Sainkul Chourasi Purbiya Piyau/Bagechi Sanstha & Ors.)

Date of order : 9.4.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.D. Purohit, for the petitioner.
Mr. Suresh Shrimali, for the respondents.

By way of filing the present writ petition, the petitioner has challenged the impugned order dated 24.4.2004 (Annexure-4) passed by learned Additional District Judge, No.1, Jodhpur in Civil Appeal No.18/2004 as well the oder dated 24.3.2004 (Annexure-2) passed by learned Civil Judge (Senior Division), Jodhpur in Civil Original Suit No.58A/2001 and prayed that both the orders may be quashed.

According to the facts narrated in the writ petition, the plaintiff-non-petitioner filed a suit for eviction, recovery of rent and further for fixation of standard rent on 2.5.2001, alleging that he has let out shop No.2 to the defendant-petitioner on rent @ Rs.175/- per month in the year 1984 and due to escalation of the market value of the rent and the construction cost, the standard rent of the shop may be fixed @ Rs.3,000/- per month.

The written statement was filed by the

defendant-petitioner while objecting that though the shop in question was taken by him on rent @ Rs.175/- per month but with an object to declare the petitioner as defaulter, the plaintiff-respondent is not accepting the rent and the plaintiff-respondent has filed the suit with an object to increase/enhance the rent whereas there exists no valid reasons for increase/enhancement of the standard rent. It was further submitted that the shop is not situated in the prime location and its valuation cannot be assessed more than Rs.4,00,000/-.

The learned Civil Judge (Senior Division), Jodhpur by its order dated 24.3.2004 fixed the provisional standard rent by enhancing the present rent of Rs.175/- to Rs.2,000/- per month.

The aforesaid order dated 24.3.2004 was challenged by the petitioner in appeal under Section 22 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1955 before the Additional District Judge No.1, Jodhpur. The learned Additional District Judge while partly allowing the appeal reduced the provisional standard rent from Rs.2000/- per month to Rs.1400/- per month.

The main limb of the arguments of the learned counsel for the petitioner is that the provisions as contained in Section 6 of the Rajasthan Premises

(Control of Rent & Eviction), Act, 1955 was required to be kept in mind while determining the standard rent but the learned trial court has failed to do so. Further, it is submitted by the learned counsel for the petitioner that the learned trial court has failed to consider the material facts with regard to location of the shop as also the negligible facilities/amenities available near the premises, while determining the provisional standard rent and no cogent evidence has been produced upon which the provisional standard rent could be fixed at Rs.1400/- per month. Learned trial court without there being any valid foundation and evidence fixed the provisional standard rent which is totally unsustainable in the eye of law. Learned counsel for the petitioner in support of his arguments has placed reliance upon the judgment of this Court rendered in case of Brahma Nand Vs. Durga Prashad & Ors., reported in 2004 (1) DNJ (Raj.) 405.

On the other hand, Mr. Suresh Srimali, learned counsel for the plaintiff-respondent vehemently opposed the prayer and submitted that the concurrent findings given by both the courts do not require any interference by this Court. Further, it is only provisional standard rent and the final adjudication is yet to be made by the trial court, therefore, at this stage, this writ petition is not maintainable. He has invited the attention of this

Court towards the provisions contained in Section 7(v) of the Act and prayed that amount paid as provisional rent can be adjusted towards the payment of the standard rent finally decreed. Therefore, at this stage, no interference is required and the learned trial court has rightly fixed the provisional rent on sound reasons but the learned appellate court has reduced the said amount from Rs.2000/- per month to Rs.1400/- per month, which requires no interference. He has also invited the attention of this Court towards the judgment rendered by this Court reported in 2003 RLW (1) 614.

I have perused both the orders impugned and challenged by the petitioner as well as the judgments cited before me by the respective parties.

In my opinion, there is no dispute with regard to tenancy between the parties and the learned trial court while deciding the application for determination of provisional standard rent gave valid reasons. It has been observed in para 9 of the order dated 24.3.2004 that the shop is situated at Main Chopsani Road, which is a prime location and earlier rent @ Rs.175/- per month requires to be enhanced to Rs.2000/- per month. All the facilities and amenities are available and on the basis of dimensions of shop, locality and price index, the rent is requires to be enhanced from Rs.175/- per month to Rs.2000/- per

month. I see no reason to interfere with the finding given by the learned trial court for determination of the provisional standard rent. It is also obvious that in appeal, learned appellate court has reduced the said rent from Rs.2,000/- to Rs.1,400/- per month. I see no reasons to interference with the order passed by the learned appellate court also while exercising the jurisdiction under Articles 226 and 227 of the Constitution of India because it is a case of fixing of provisional standard rent, which is subject to final adjudication by the trial court and as per Section 7 (5) of the Act, the amount of provisional standard rent is adjustable. The defendant-petitioner has right to lead his evidence before the trial court for final determination of the standard rent. Further, the judgment relied upon by the learned counsel for the petitioner in case of Brahma Nand (supra) is not applicable in the facts and circumstances of the present case because the said judgment is with regard to the final determination of the standard rent whereas in the present case, provisional standard rent has been determined under Section 7 of the Act of 1955.

I find no force in the writ petition. The writ petition is dismissed, accordingly.

(GOPAL KRISHAN VYAS), J.

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